

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
NEW YORK BRANCH OFFICE**

**MAJOONGMOOL CORP., d/b/a ALWAYS IS NAILS,
NEW ALWAYS NAILS, CORP., d/b/a ALWAYS IS NAILS,
ALWAYS NAILS II, INC., d/b/a ALWAYS IS NAILS,
J.H. DIVA NAIL AND SPA, INC., d/b/a DIVA SPA AND NAILS,
and VIVA NAILS & SPA, INC., d/b/a DIVA SPA AND NAILS
A Single Employer**

**Case Nos. 29-CA-28950
29-CA-29109
29-CA-29201
29-CA-29232**

and

CHINESE STAFF AND WORKERS ASSOCIATION

David Pollack, Esq., Counsel for the General Counsel.

DECISION

Statement of the Case

Joel P. Biblowitz, Administrative Law Judge: This case was heard by me on July 14, 2010 in Brooklyn, New York. The Consolidated Complaint herein, which issued on September 29, 2008¹, was based upon unfair labor practice charges, and amended charges that were filed on May 20, June 26, July 30, September 29, October 20, and October 29 by Chinese Staff and Workers Association, herein called the Union. The Complaint alleges that Majoongmool Corp., d/b/a Always Is Nails, New Always Nails Corp., d/b/a Always Is Nails, Always Nails II, Inc., d/b/a Always Is Nails, J.H. Diva Nail and Spa, Inc., d/b/a Diva Spa And Nails, and Viva Nails & Spa, Inc., d/b/a Diva Spa and Nails, herein called Respondent, a single integrated business enterprise and a single employer within the meaning of the Act, violated Section 8(a)(1) and (4) of the Act by threatening employees with reprisals in retaliation for their protected concerted activities, discriminated against employees because of their protected concerted activities, discharged employee Yue F. Xia because of her protected concerted activities, and caused employee Qiao F. Chen to be denied employment by an entity that purchased its facility, because of the protected concerted activities engaged in by Chen.

On November 30, 2009, the Regional Director approved a bilateral settlement agreement resolving all of the allegations of the Complaint. Said Agreement required, *inter alia*, that the Respondent make whole the employees named below by paying them the amount set forth opposite their names, minus statutory deductions, and that Respondent post a Notice.:

Siew Voon Thong (a/k/a "Sammi")...	\$9,600.00
Yue F. Xia (a/k/a "Laura").....	\$3,255.00
Qiao F. Chen (a/k/a "Linda").....	\$4,145.00

The Order Revoking Settlement and Re-issuing and Amending Consolidated Complaint and Notice of Hearing, which issued on June 7, 2010, alleges that the Respondent breached the bilateral settlement agreement by failing and refusing to make these payments to Thong, Xia

¹ Unless indicated otherwise, all dates referred to herein relate to the year 2008.

and Chen and by failing to post the Notice to Employees, and on January 25, 2010, the Supervisory Attorney for the Compliance Division of Region 29 wrote to Respondent's counsel advising that it was in default of the terms of the settlement agreement, requesting that it cure the default no later than February 3, 2010, but that Respondent failed to do so. No Answer was
5 filed in response to this Order Revoking Settlement. By letter dated June 22, 2010, Counsel for the General Counsel notified counsel for the Respondent that the region had not received an Answer to the Order Revoking Settlement, dated June 7, 2010, and unless an Answer was received by June 28, 2010, the region would seek summary judgment on the allegations in the Consolidated Complaint. The Respondent did not file an Answer, nor did it appear at the
10 hearing herein. Counsel for the General Counsel, at the hearing, moved for default judgment, which motion I granted. I therefore make the following findings of fact and conclusions of law:

1. The charge in Case No. 29-CA-28950 was filed by the Union on May 20, 2008, and copies were served by regular mail on Respondent on or about May 29, 2008.

15 2. The first amended charge in Case No. 29-CA-28950 was filed by the Union on June 26, 2008, and copies were served by regular mail on Respondent on or about June 30, 2008.

20 3. The second amended charge in Case No. 29-CA-28950 was filed by the Union on July 30, 2008, and copies were served by regular mail on Respondent on or about July 31, 2008.

25 4. The charge in Case No. 29-CA-29109 was filed by the Union on July 30, 2008, and copies were served by regular mail on Respondent on or about August 8, 2008.

5. The charge in Case No. 29-CA-29201 was filed by the Union on September 29, 2008, and copies were served by regular mail on Respondent on or about October 7, 2008.

30 6. The amended charge in Case No. 29-CA-29201 was filed by the Union on October 29, 2008, and copies were served by regular mail on Respondent on or about October 29, 2008.

35 7. The charge in Case No. 29-CA-29232 was filed by the Union on October 20, 2008, and copies were served by regular mail on Respondent on or about October 24, 2008.

8. The amended charge in Case No. 29-CA-29232 was filed by the Union on October 29, 2008, and copies were served by regular mail on Respondent on or about October 29, 2008.

40 9. At all material times, Majoongmool Corp., a domestic corporation, doing business under the name "Always Is Nails" at its principal place of business, located at 744 Old Bethpage Road, Old Bethpage, New York, has been engaged in operating a nail salon, providing manicures, pedicures, waxing and other personal-care services to customers at its Old Bethpage facility.

45 10. At all material times, New Always Nails, Corp., a domestic corporation, doing business under the name "Always Is Nails" at its principal place of business, located at 744 Old Bethpage Road, Old Bethpage, New York, has been engaged in operating a nail salon, providing manicures, pedicures, waxing and other personal-care services to customers at its Old Bethpage facility.

50 11. At all material times, Always Nails II, Inc., a domestic corporation, doing business under the name "Always Is Nails" at its principal place of business, located at 744 Old Bethpage

Road, Old Bethpage, New York, has been engaged in operating a nail salon, providing manicures, pedicures, waxing and other personal-care services to customers at its Old Bethpage facility.

12. At all material times, Viva Nails & Spa, Inc., a domestic corporation, doing business under the name of "Diva Spa and Nails" at its principal place of business, located at 240 Glen Head Road, Glen Head, New York, has been engaged in operating a nail salon, providing manicures, pedicures, waxing and other personal-care services to customers at its Glen Head facility.

13. At all material times, J.H. Diva Nail and Spa, Inc., a domestic corporation, doing business under the name of "Diva Spa and Nails" at its principal place of business, located at 240 Glen Head Road, Glen Head, New York, has been engaged in operating a nail salon, providing manicures, pedicures, waxing and other personal-care services to customers at its Glen Head facility.

14. At all material times, Majoongmool Corp., d/b/a Always Is Nails, New Always Nails, Corp., d/b/a Always Is Nails, Always Nails II, Inc., d/b/a Always Is Nails, J.H. Diva Nail and Spa, Inc., d/b/a Diva Spa and Nails, and Viva Nails & Spa, Inc., d/b/a Diva Spa and Nail, have been affiliated business enterprises with common officers, owners and management; have formulated a common labor policy; and have jointly purchased supplies.

15. Based on these operations, as described above in paragraph 14, Majoongmool Corp., d/b/a Always Is Nails, New Always Nails, Corp., d/b/a Always Is Nails, Always Nails II, Inc., d/b/a Always Is Nails, J.H. Diva Nail and Spa, Inc., d/b/a Diva Spa and Nails, and Viva Nails & Spa, Inc., d/b/a Diva Spa and Nail, a Single Employer, constitute a single integrated business enterprise and a single employer within the meaning of the Act.

16. Annually, Respondent derives gross revenues in excess of \$500,000 in the operation of its two facilities collectively.

17. Annually, Respondent purchases and receives at its Glen Head, New York facility, goods and supplies valued in excess of \$5,000 from suppliers within the State of New York which suppliers, in turn, purchase them directly from entities located outside the State of New York.

18. At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

19(a). At all material times, the following named persons have held the positions listed next to their names, have been supervisors of Respondent within the meaning of Section 2(11) of the Act, and have been agents of Respondent, acting on its behalf:

Susan Lee	President and co-owner
John Lee	Co-owner
Mindy (last name unknown)	Manager
Han (last name unknown)	Manager
Ann Loig	Manager

(b) At all material times, Danny Li has been an agent of Respondent, acting on its behalf.

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20. On or about December 20, 2007, Respondent's employees, including Siew Voon Thong (also known as "Sammi") and Vue F. Xia (also known as "Laura Xia"), concertedly complained to Respondent regarding their working conditions by meeting with Respondent's manager Mindy to protest a \$20 uniform fee which Respondent had imposed.

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21. On or about December 27, 2007, Respondent, by Mindy, in the Old Bethpage facility, issued a new work schedule, effective January 1, 2008, because Thong and Xia had engaged in the conduct described above in paragraph 20, and below in paragraphs 22 through 24, consisting of the following:

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(a) Respondent reduced Xia's work schedule, from five (5) days per week to four (4) days per week, thereby reducing her earnings.

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(b) On or about the first full week of February 2008, Respondent restored Xia to work five (5) days per week.

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(c) Respondent's new work schedule indicated that Thong would be reduced from five (5) days per week to four (4) days per week, although the new schedule did not go into effect until Thong's schedule was further reduced, as described in paragraph 26 below.

22. On or about December 27, 2007, Xia concertedly complained to Respondent regarding the reduction in employees' work schedule and earnings, by speaking with Respondent's agent Mindy at the Old Bethpage facility.

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23. On or about December 28, 2007, Thong concertedly complained to Respondent regarding the reduction in employees' work schedule and earnings, by speaking with Mindy at the Old Bethpage facility.

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24. On or about December 29, 2007, Thong concertedly complained to Respondent regarding the reduction in employees' work schedule and earnings, by speaking with Respondent's President Susan Lee on the telephone.

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25(a). On or about December 30, 2007, Respondent, by its agents Danny Li and Mindy, failed and refused to provide Thong transportation to work, as it usually did, thereby causing her to lose a day's pay.

(b) Respondent engaged in the conduct described above in subparagraph 25(a) because of Thong's concerted conduct, as described above in paragraphs 20, 23 and 24.

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26. On or about December 31, 2007, Respondent, by its agents Mindy and Susan Lee, further reduced employee Thong's work schedule and earnings, as follows

(a) Respondent further reduced Thong's work schedule from four (4) days per week to three (3) days per week, effective immediately.

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(b) On or about August 11, 2008, Respondent restored Thong to a schedule of five days per week.

(c) Respondent engaged in the conduct described above in paragraph 26(a) because of Thong's concerted complaints, as described above in paragraphs 20, 23 and 24.

27. On or about April 14, 2008, in response to a complaint that Thong had filed with the Urban Justice Center regarding her terms and conditions of employment, Respondent, by its agent Han, at the Old Bethpage facility, told Thong that if Susan Lee decided to resolve the complaint by giving Thong a settlement payment, Thong must not talk to Xia or other employees about it.

28. During the same April 14, 2008, conversation with Han, described above in paragraph 27, Han threatened Thong with unspecified reprisals if she engaged in future concerted activities.

29. On or about April 15, 2008, Thong and Xia continued to engage in concerted activity by attending a meeting with Respondent's representatives at a diner in Flushing, to try to resolve Thong's complaints through the Urban Justice Center.

30. On or about April 28, 2008, Respondent, by its agent Susan Lee, outside the door of the Old Bethpage facility, threatened Xia with discharge to induce her to cease engaging in protected concerted activities.

31. On or about May 19, 2008, Respondent, by its agent John Lee, in the Old Bethpage facility, threatened Xia with discharge to induce her to cease engaging in protected concerted activities.

32. During the same May 19, 2008, conversation described above in paragraph 31, Respondent, by its agent John Lee, threatened Xia with the loss of transportation to work to induce her to cease engaging in protected concerted activities.

33. On various dates in late June 2008, and in July 2008, Thong and Xia concertedly protested against Respondent's keeping of time records, including using a single time card for all employees and possibly depriving them of overtime pay, as follows:

(a) on an evening in late June 2008, by Xia re-punching the employees' time card which Respondent's agent Li had punched out prematurely, before the workers had finished their shift;

(b) on the same evening in late June 2008, by Xia and Thong complaining directly to Li about his card-punching practices;

(c) on a Sunday in mid-July 2008, in the presence of manager Ann Loig and agent Li, by Thong advising Xia and other workers not to sign the timecard until she (Thong) had a chance to review its accuracy;

(d) on the same Sunday in mid-July 2008, in the presence of Li, Loig and owner Susan Lee, by Thong refusing to sign the time-card until she corrected the employees' time card by hand, and by encouraging employees to sign only after she had corrected the card;

(e) on the evening of July 27, 2008, by Thong re-punching the employees' time card after Li had punched it prematurely, and by Thong complaining directly to Li on behalf of other workers about his inaccurate timekeeping.

34. On or about July 27, 2008, Respondent, by its agent Li, while driving employees home in the company vehicle, threatened employees with unspecified reprisals to induce them not to participate in protected concerted activities with fellow employee Thong.

35. On various dates in August, 2008, Xia, Thong and Qiao F. Chen (also known as "Linda Chen") engaged in picketing to concertedly complain about Respondent's retaliation against employees and its failure to pay overtime.

36. On or about August 25, 2008, Xia, Thong and Chen concertedly filed a lawsuit against Respondent in the United States District Court for the Eastern District of New York, alleging that Respondent engaged in discrimination and retaliation, and that Respondent failed to pay overtime and the minimum wage.

37(a). On various dates in June, July and August, 2008, Respondent, by its supervisor and agent, Ann Loig, directed customers away from Xia, thereby depriving Xia of tips and thereby reducing her earnings.

(b) Respondent engaged in the conduct described above in paragraph 37(a) because of Xia's concerted activities, as described above in paragraphs 20,29,33,35 and 36.

(c) Respondent engaged in the conduct described above in paragraph 37(a) because Xia testified before the Board and participated in the investigation of unfair labor practice charges filed in Case Nos. 29-CA-26325, 29CA-26378, 29-CA-26720 and 29-CA-26994. 29-CA-28950 and 29-CA-29109.

38(a) On or about August 31,2008, Respondent discharged Xia.

(b) Since on or about August 31, 2008, Respondent has failed and refused to reinstate, or to offer to reinstate, Xia to her former position of employment.

(c) Respondent engaged in the conduct described above in paragraphs 38(a) and 38(b) because of Xia's concerted activities, as described above in paragraphs 20, 29, 33, 35 and 36.

39(a). Since on or about September 22,2008, Respondent has caused Chen to be denied employment by an entity that purchased the facility located at 744 Old Bethpage Road, Old Bethpage, New York.

(b) Respondent engaged in the conduct described above in paragraph 39(a) because of Chen's concerted activities, as described above in paragraphs 35 and 36.

40. By the conduct described above in paragraphs 21 (a) and (c), 25 through 28, 30 through 32, 34, 37(a) and (b), and 38 and 39, Respondent has been interfering with, restraining and coercing its employees in their exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

41. By the conduct described above in paragraphs 37(a) and (c), Respondent has been discriminating against employees for filing charges or giving testimony under the Act in violation of Section 8(a)(1) and (4) of the Act.

42. The unfair labor practices of Respondent, described above, affect commerce within the meaning of Section 2(6) and (7) of the Act.

43(a) On November 30, 2009, the undersigned Regional Director approved a bilateral informal settlement agreement, attached hereto as Exhibit A, resolving all of the allegations set forth above in paragraphs 1 through 42.

- 5 (b) The bilateral settlement agreement required, *inter alia*, that Respondent make whole the employees named below by payment to each of them of the amount opposite their names, minus statutory deductions:

10	Name	Backpay Amount
	Siew Voon Thong (a/k/a "Sammi"):	\$9,600.00
	Yue F. Xia (a/k/a "Laura"):	\$3,255.00
15	Qiao F. Chen (a/k/a "Linda"):	\$4,145.00

44. Respondent has breached the bilateral informal settlement agreement described above in paragraphs 43(a) and (b) by failing and refusing to make the payments set forth above in paragraph 43(b).

20 45. On January 25, 2010, the Supervisory Attorney for the Compliance Division of Region 29 wrote to Respondent's counsel advising that it was in default of the terms of the bilateral informal settlement agreement, and requesting that it cure said default, no later than February 3, 2010.

25 46. The bilateral informal settlement agreement, referred to above in paragraph 43(a), provides, *inter alia*, that in the event Respondent fails to cure any default thereof, it waives its right to file an Answer to all the allegations made by the General Counsel in a re-issued complaint, and/or a complaint based upon the allegations of the charges in the instant cases
30 which were found to have merit, and to raise any defenses thereto, except whether Respondent defaulted upon the terms of the bilateral informal settlement agreement and/or if it received notice to cure said default.

35 47. As Respondent has failed to comply with certain terms of the bilateral informal settlement agreement as approved on November 30, 2009, or cure its default of those terms of the bilateral informal settlement agreement, the bilateral informal settlement agreement is hereby revoked and, as set forth therein, the allegations set forth in the Consolidated Complaint may be deemed to be true by the Board, and the Board may enter findings of facts, conclusions of law, and an Order on the allegations of the aforementioned Consolidated Complaint,
40 including a complete, traditional backpay remedy for all violations of the Act.

48. The unfair labor practices of the Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

45 **The Remedy**

50 Having found that the Respondent has engaged in certain unfair labor practices, I recommend that it be ordered to cease and desist therefrom and that it be ordered to take certain affirmative action designed to effectuate the policies of the Act. In this regard, Respondent shall, within 10 days from the date of this Decision, pay to the following individuals the amount set forth opposite their names:

Siew Voon Thong (a/k/a “Sammi”)	\$9,600.00
Yue F. Xia (a/k/a “Laura”)	\$3,255.00
Qiao F. Chen (a/k/a “Linda”)	\$4,145.00

5 On these findings of fact and conclusions of law and on the entire record, I issue the following recommended

ORDER²

10 The Respondent, Majoongmool Corp., d/b/a Always Is Nails, New Always Nails Corp., d/b/a Always Is Nails, Always Nails II, Inc., d/b/a Always Is Nails, J.H. Diva Nail and Spa, Inc., d/b/a Diva Spa And Nails, and Viva Nails & Spa, Inc., d/b/a Diva Spa and Nails, its officers, agents, successors and assigns, shall

15 1. Cease and desist from

(a) Threatening employees with the loss of benefits in retaliation for their engaging in protected concerted activities.

20 (b) Discharging, or otherwise discriminating against its employees in retaliation for their engaging in protected concerted activities.

25 (c) In any like or related manner interfering with, restraining or coercing its employees in the exercise of their rights guaranteed by Section 7 of the Act.

2. Take the following affirmative action designed to effectuate the policies of the Act:

30 (a) Within 10 days from the date of this Decision make whole the employees named below by paying them the amount set forth opposite their names:

Siew Voon Thong (a.k.a “Sammi”)	\$9,600.00
Yue F. Xia (a.k.a “Laura”)	\$3,255.00
Qiao F. Chen (a.k.a “Linda”)	\$4,145.00

35 (b) Within 14 days after service by the Region, post at its facilities in Old Bethpage or Glen Head, New York, copies of the attached notice marked “Appendix.”³ Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent’s authorized representative, shall be posted by the Respondent and maintained for 40 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the

45 ² If no exceptions are filed as provided by Sec. 102.46 of the Board’s Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

50 ³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading “Posted by Order of the National Labor Relations Board” shall read “Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.”

pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since December 27, 2007.

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(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

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Dated, Washington, D.C. July 26, 2010

Joel P. Biblowitz
Administrative Law Judge

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APPENDIX**NOTICE TO EMPLOYEES**

**Posted by Order of the
National Labor Relations Board
An Agency of the United States Government**

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT threaten employees with the loss of benefits in retaliation for their engaging in protected concerted activities.

WE WILL NOT discharge, or otherwise discriminate against our employees in retaliation for their engaging in protected concerted activities.

WE WILL reimburse the following employees for the losses that they suffered as a result of our discrimination by paying them the amount set forth opposite their names:

Siew Voon Thong (a/k/a "Sammi")	\$9,600.00
Yue F. Xia (a/k/a "Laura")	\$3,255.00
Qiao F. Chen (a/k/a "Linda")	\$4,145.00

**Majoongmool Corp., d/b/a Always Is Nails, New Always Nails Corp., d/b/a Always Is Nails, Always Nails II, Inc., d/b/a Always Is Nails, J.H. Diva Nail and Spa, Inc., d/b/a Diva Spa And Nails, and Viva Nails & Spa, Inc., d/b/a Diva Spa and Nails
(Employer)**

Dated _____ **By** _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

Two MetroTech Center (North), Jay Street and Myrtle Avenue, 5th Floor

Brooklyn, New York 11201-4201

Hours: 9 a.m. to 5:30 p.m.

718-330-7713.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S

COMPLIANCE OFFICER, 718-330-2862.